



## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2022-0016]

### Request for Comments and Notice of a Public Hearing Regarding the 2023 Special 301 Review

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for comments and notice of public hearing.

**SUMMARY:** Each year, the Office of the United States Trade Representative (USTR) conducts a review to identify countries that deny adequate and effective protection of intellectual property (IP) rights or deny fair and equitable market access to U.S. persons who rely on IP protection. Based on this review, the U.S. Trade Representative determines which, if any, of these countries to identify as Priority Foreign Countries. USTR requests written comments that identify acts, policies, or practices that may form the basis of a country's identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List.

#### **DATES:**

January 30, 2023 at 11:59 pm EST: Deadline for submission of written comments from the public.

February 13, 2023 at 11:59 pm EST: Deadline for submission of written comments from foreign governments.

February 22, 2023: Deadline for the Special 301 Subcommittee of the Trade Policy Staff Committee (Subcommittee) to pose questions on written comments.

March 7, 2023 at 11:59pm EST: Deadline for submission of commenters' responses to questions from the Subcommittee.

On or about April 28, 2023: USTR will publish the 2023 Special 301 Report within 30 days of the publication of the National Trade Estimate Report.

**ADDRESSES:** USTR strongly encourages electronic submissions made through the Federal eRulemaking Portal: <https://www.regulations.gov> (Regulations.gov). Follow the submission instructions in section IV below. The docket number is USTR-2022-0016. For alternatives to on-line submissions, please contact USTR at [Special301@ustr.eop.gov](mailto:Special301@ustr.eop.gov) before transmitting a comment and in advance of the relevant deadline.

**FOR FURTHER INFORMATION CONTACT:** Ariel Gordon, Director for Innovation and Intellectual Property, at [Special301@ustr.eop.gov](mailto:Special301@ustr.eop.gov) or (202)-395-6862. You can find information about the Special 301 Review at <https://www.ustr.gov>.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly known as the Special 301 provisions, requires the U.S. Trade Representative to identify countries that deny adequate and effective IP protections or fair and equitable market access to U.S. persons who rely on IP protection. The Trade Act requires the U.S. Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act (19 U.S.C. 2411–2415).

In addition, USTR has created a Priority Watch List and Watch List to assist in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Subcommittee, which reviews information from many sources, and consults with and makes recommendations to the U.S. Trade Representative on

issues arising under Special 301. Written submissions from the public are a key source of information for the Special 301 review process. As discussed below, in 2023, in lieu of an in-person hearing, the Subcommittee will submit written questions to commenters as part of the review process and will allow commenters to provide written responses. At the conclusion of the process, USTR will publish the results of the review in a Special 301 Report.

USTR requests that interested persons identify through the process outlined in this notice those countries the acts, policies, or practices of which deny adequate and effective protection for IP rights or deny fair and equitable market access to U.S. persons who rely on IP protection. The Special 301 provisions also require the U.S. Trade Representative to identify any act, policy, or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 32.6 of the United States-Mexico-Canada Agreement (USMCA) (as defined in section 3 of the USMCA Implementation Act). USTR invites the public to submit views relevant to this aspect of the review.

The Special 301 provisions require the U.S. Trade Representative to identify all such acts, policies, or practices within 30 days of the publication of the National Trade Estimate Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report about April 28, 2023.

## **II. Public Comments**

To facilitate this year's review, written comments should be as detailed as possible and provide all necessary information to identify and assess the effect of the acts, policies, and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential, or other orders, and administrative, court, or other determinations that should factor into the review. USTR also requests that, where relevant, submissions

mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry, and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should include the methodology used to calculate the estimated losses.

### **III. Public Participation**

In 2023, due to COVID-19, USTR will foster public participation via written submissions rather than an in-person hearing. The Subcommittee will review written comments and may ask clarifying questions to commenters. The Subcommittee will post the questions on the public docket, other than questions that include properly designated business confidential information (BCI). The Subcommittee will send questions that include properly designated BCI to the relevant commenters by email, and will not post these questions on the public docket. Replies to questions that contain BCI must follow the procedures in section IV below.

In order to be eligible to receive written questions, the written submissions must be in English and must include the name, address, telephone number, email address, and firm or affiliation of the submitter.

### **IV. Submission Instructions**

All submissions must be in English and sent electronically via Regulations.gov using docket number USTR-2022-0016. To submit comments, locate the docket (folder) by entering the number USTR-2022-0016 in the ‘search for dockets or documents on agency actions’ window at the Regulations.gov home page and click ‘search.’ The site will provide a search-results page listing all documents associated with this docket.

Locate the reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the link entitled 'comment'.

USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol: Commenter Name or Organization\_2023 Special 301\_Review\_Comment. Please include the following information in the 'start typing comment here' field: '2023 Special 301 Review.' Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the 'start typing comment here' field. For further information on using Regulations.gov, please select 'FAQ' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments that contains BCI, the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily release it to the public. Additionally, the filer should type 'business confidential' in the 'start typing comment here' field. Filers of comments containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P'. The 'BCI' and 'P' should be followed by the name of

the person or entity submitting the comments. Filers submitting comments containing no BCI should name their file using the name of the person or entity submitting the comments.

As noted, USTR strongly urges commenters to submit comments through Regulations.gov. You must make any alternative arrangements before transmitting a document and in advance of the relevant deadline by contacting USTR at Special301@ustr.eop.gov.

USTR will place comments in the docket and they will be open to public inspection, except properly designated BCI. You can view comments on Regulations.gov by entering Docket Number USTR-2022-0016 in the 'search' field on the home page.

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